



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.03.2022

DELIVERED ON : 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

WEB COPY

S.A(MD)No.343 of 2020

and

C.M.P (MD)No.4038 of 2020

Selvi

... Appellant/Appellant/1st Defendant

Vs

1.P.Dharmarajan

Managing Trustee of Anandha Samudra Grama,

Brahamana Samudhayam, 41, South Car Street,,

Nagercoil, Vadiveeswaram Village,,

Agasteeswaram Taluk,

Kanyakumari District.... 1st Respondent/1st Respondent/Plaintiff

2.Ananthan

3.Manthira Moorthi

... Respondents 2 & 3/Respondents 2 & 3/
Defendants 2 & 3

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the impugned judgment and decree passed by the learned Principal Subordinate Judge, Nagercoil in A.S.No.10 of 2019, dated 17.12.2019 confirming the judgment and decree passed by the learned I Additional District Munsif, Nagercoil, dated 11.02.2019 in O.S.No.490 of 2011.

For Appellant : Mr.N.Dilip Kumar

For Respondents : Mr.C.Dhanaseelan
for R1

JUDGMENT

The first defendant is the appellant herein.

2. The plaintiff filed O.S.No.490 of 2011 before the I Additional District Munsif, Nagercoil for ejectment. The suit was decreed by the trial Court. The first defendant filed A.S.No.10 of 2019 before the Principal Sub Court, Nagercoil. The learned Subordinate Judge dismissed the appeal. As against the concurrent findings, the present Second Appeal has been filed by the first defendant.

3. The plaintiff has contended that the suit schedule properties belonged to the plaintiff Samudhayam at Nagercoil represented by its Managing Trustee. According to the plaintiff, the

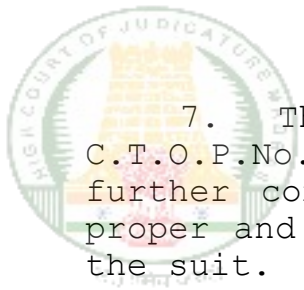


suit schedule property was leased out as a site to the first defendant. Originally, the first defendant's father-in-law had taken the land for ground lease and constructed the buildings. After his life time, first defendant's husband is in possession of the suit schedule properties. The lease deed was periodically renewed. The latest lease deed was executed on 01.01.2007 under Exhibit A1 for a period of three years fixing a monthly rent of Rs.780/-. The lease period had expired on 31.12.2009, and thereafter, the lease was not renewed.

4. The plaintiff had further contended that the defendant was not regular in payment of the monthly rent and used to pay the rent in lump sum. In fact, the first defendant had not paid the monthly rent for the period between January 2011 and June 2011. As per the lease deed under Exhibit A1, the defendant is not entitled to sublet the suit schedule properties. However, contrary to the lease agreement, the first defendant has sublet the property to the second and third defendants. Now, the possession of the property is with the sub-lessees.

5. The plaintiff further contended that they issued a legal notice on 04.07.2011 under Exhibit A2, terminating the lease on the ground of default in payment of rent and subletting. Though the Postal Department informed the defendant about the notice, the defendant did not make a claim and the notice was returned as unclaimed. Hence, the present suit for ejectment.

6. The defendants filed a written statement contending that the plaintiff is not a registered society or a trust and hence, the present suit is not maintainable. The defendant further contended that he is a lessee of the site only and he has put up the construction over the suit schedule properties. According to the defendant, the suit schedule property was originally leased to one Mukkia Braminan Potti and his wife Nagaveni Amma, those lessees have put up permanent construction in the suit schedule property. In the year 1946, the defendants husband's grand-father namely, Narayan Nadar had purchased the super-structure along with the lease holder and other movables. The said Narayan Nadar's son Ramalinga Nadar inherited the property. After his life time, first defendant's husband Veerakumara Rajan got the suit schedule property under partition deed, dated 01.06.1985. The tenancy was attorned in favour of the plaintiff. The lease amount was regularly paid without any default. The defendant has also deposited the alleged arrears in the Court and hence, there is no rental arrears as on today. The defendants further contended that there is no prohibition in Exhibit A1 lease deed from subletting the suit schedule properties. According to the first defendant, the second and third defendant are in possession of the suit schedule properties for many years and hence, the plaintiff cannot raise the plea of subletting at this point of time.



7. The defendant also claimed that they have filed C.T.O.P.No.12 of 2011, claiming to purchase the site. The defendants further contended that the notice issued under Exhibit A2 is not proper and maintainable in law. Hence, they prayed for dismissal of the suit.

WEB COPY

8. The trial Court after consideration of the oral and documentary evidence arrived at a finding that there is a land-lord tenant relationship between the plaintiff and the defendant and the trial Court also found that the defendants have already withdrawn C.T.O.P.No.12 of 2011. The trial Court found that a proper notice has been issued under Section 106 of the Transfer of Property Act and the objections raised by the defendant in the written statement with regard to the validity of the said notice are vague. The trial Court also found that the rental agreement between the plaintiff and the first defendant is for monthly tenancy and it is not annual tenancy as contended by the first defendant. Based upon the said findings, the trial Court concluded that the first defendant has committed default in payment of monthly rent to the plaintiff. The trial Court also found that there is a specific clause in the rental agreement that the first defendant should not sublet the suit schedule properties. The trial Court also found that the first defendant has sublet the suit schedule properties in favour of the second and third defendants. Based upon the said findings, the trial Court decreed the suit as prayed for.

9. The First Appellate Court after independent consideration of the oral and documentary evidence arrived at a finding that where a letter is returned as unclaimed, it would amount to service. The First Appellate Court also found that the notice issued under Section 106 has been legally issued and there are no infirmities in the said notice. Though the tenancy got terminated on 31.12.2009, the defendant has neither taken steps to renew the lease nor attempted to make monthly payment towards the rent. Before the First Appellate Court, the defendant had contended that as per Exhibit A1 agreement and A2 legal notice, whenever the defendant vacates the property, the plaintiff has to pay 2/3 of the value of the super-structure. The defendants contended that the payment has not been made and hence, the suit is not maintainable. The First Appellate Court found that there is no such plea in the written statement. The First Appellate Court also found that the first defendant has not proved his contention that the existence of sub lessees namely, second and third defendant is already known to the plaintiff. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the same, the present Second Appeal has been filed.

10. The learned Counsel for the appellant contended that the suit has not been filed after obtaining permission from the Court under Section 92 of the Civil Procedure Code. I find that Section 92



land-lord seeks to vacate his tenant. There is no dispute with regard to the administration or management of a public trust. Hence, the contention of the learned Counsel for the appellant is not legally sustainable. The learned Counsel for the appellant further contended that as per the lease agreement under Exhibit A1 and the legal notice of Exhibit A2, the plaintiff has to pay a sum of 2/3 of the value of the super-structure before vacating the tenant. In the present case, the plaintiff has not paid the same and hence, the notice issued under Section 106 is not valid. I am afraid, such a contention cannot be raised in the Second Appeal. A perusal of the written statement will disclose that no such defence has been raised by the defendant. The plaintiff has agreed to pay the compensation at the time of vacating the premises. The defendant will be at liberty to avail the said remedy at the time of handing over of the possession. However, the payment of money, 2/3 of the value of the super-structure cannot be a condition precedent for handing over the possession of the suit schedule properties.

11. The learned Counsel for the respondent contended that a dilapidated building was there in the suit schedule properties and the same has fallen to ground that the defendants have already vacated the suit schedule properties. The learned Counsel for the land-lord further contended that after vacating the suit premises, the defendants attempted to put up a new super-structure. Hence, the plaintiff had filed O.S.No.114 of 2019, seeking permanent injunction restraining the defendants from putting up a construction. In the said suit, an order of interim injunction has been granted. As on today, there is no building in the suit schedule properties. Hence, he contended that question of payment of compensation for the 2/3 value of the super-structure does not arise.

12. The learned Counsel for the appellant further contended that during the pendency of the suit, the plaintiff had continued to receive the rent from the tenant. The reception of rent from the tenant after termination of tenancy under Section 106 of the Transfer of Property Act, will amount to waiver of the notice. The learned Counsel for the appellant further contended that the acceptance of the rent amounts to renewal of lease. The Hon'ble Supreme Court in a judgment reported in **AIR 1961 SCC page 1067** has held as follows:

"4.....It is however, well settled that where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual tenancy".



13. In view of the judgment of the Hon'ble Supreme Court, the contention of the learned Counsel for the appellant that the plaintiff has waived his right in view of the acceptance of the rent is not legally sustainable.

14. In view of the above said discussion, this evident that no question of law much less a substantial question of law that arises for consideration in the above Second Appeal. The Courts below have concurrently held that the plaintiff has established his right to vacate the tenant by following due process of law. Therefore, the Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal Subordinate Judge,
Nagercoil.

2.The I Additional District Munsif,
Nagercoil.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-11287[F] dated 10/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-11372[F] dated 10/03/2022)

Judgment made in

S.A(MD)No.343 of 2020

09.03.2022

SVS (CO)

GC (28.03.2022) 5P 7C

<https://hcservices.ecourts.gov.in/hcservices/>